
Competition Assessments and Regulatory Reform

Vivek Ghosal
Georgia Institute of Technology

Rules and Regulations

- Governments intervene in markets to regulate behavior of businesses
 - market failures arising from the presence of externalities
 - common public resources and public goods
 - market power
 - insufficient or asymmetric information
 - among others

- Many legitimate social and economic objectives
 - In many areas, government action remains essential to protect and promote desirable goals

Regulatory Reform

- Recognition that rules and regulations may
 - Adversely affect growth of markets
 - Lead to increase in prices
 - Reduce innovation
 - Reduce product variety and quality

- Local, regional and national issues

- Several countries are vigorously pursuing regulatory reform
 - Better regulation
 - For example, Australia

Competition Assessments

- **Introduce a competition test**
 - Does a regulation harm competition?
 - If yes
 - ✓ Can the regulation be **restructured** to minimize harm?
 - Make this an integral part of review and reform of regulations

- What framework to use to assess harm to competition?
 - Antitrust/Competition law enforcement provides a credible and widely used set of tools and concepts which we can borrow

Competition Assessments

- Aim is **not** to question the social and economic objectives
- Aim **is** to improve the quality of regulations
 - These may improve functioning of local, regional and national markets
 - Potential long-term benefits include
 - ✓ Lower prices
 - ✓ More variety and better quality
 - ✓ More innovation
- Era of globalization
 - Improved regulatory quality may lead to national economies being more innovative and efficient
 - Markets and firms would be in a better position to compete globally

OECD Documents

- “Competition Assessments: Guidance,” March 2007, p.1-82.
 - Part of the “Competition Assessments: Toolkit.”
 - The toolkit contains several documents that relate to implementation, institutions, among others.
 - They contain a lot of details.
 - Here we very briefly outline some aspects

- Audience?
 - OECD (also non-OECD) government officials who are part of the decision-making process and implementation.
 - We hope that the “Guidance” document’s synthesis of competition law enforcement concepts and framework on one hand and regulatory reform on the other will generate academic interest

Concepts for Competition Assessments

- Integral part of Antitrust/Competition law enforcement
 - Market power
 - Barriers to entry
 - Entry of new firms
 - Exit of firms
 - Raising rivals' costs
 - Innovation and efficiencies

- Since the concepts are well known – and spelled out in detail in the OECD “Guidance” document – we skip the details here

Rules and Regulations

- **Rules and regulations that limit the number or range of suppliers**
 - Regulations on entry
 - Granting or extending exclusive rights
 - Regulations on the inter-state (or intra-national) flow of goods, services and capital

- **Rules and regulations that limit the ability of suppliers to compete**
 - Regulations on advertising and marketing
 - Rules on content and setting standards
 - Grandfather clauses
 - Regulations that influence prices

Rules and Regulations

- **Rules and regulations that reduce the incentives of suppliers to compete**
 - Promoting self-regulation
 - Cooperation and information exchange
 - Regulations that partially or completely exempt activities from national competition laws
 - Switching Costs

Rules and Regulations

Restrictions on the flow of goods and services across regions

- Create segmented markets and potentially
 - Reduce competition
 - Increase prices
 - Reduce variety
 - Reduce innovation

- E.g., the Jones Act in the U.S. places restrictions on ships carrying freight between two U.S. ports
 - State of Maine: A serious impediment to commerce and Maine fully developing business for its ports

Rules and Regulations

Restrictions on the flow of goods and services across regions

- Also applies to labor
 - Professions
 - Certification rules, degree recognition, mobility restrictions, etc
 - ✓ While they are argued to ensure quality of service
 - ✓ A side effect is that they create barriers to flow of professionals and reduce competition
 - higher prices?
 - lower service quality?
 - other effects?

Rules and Regulations

Rules on content and setting standards

- Governments can set standards on product content or characteristics, including minimum quality standards. For example, in
 - Food
 - Media
 - Building codes
 - Safety

- Professional organizations can impose minimum quality and certification standards. Professions include
 - Legal
 - Architectural
 - Accounting
 - Medical

Rules and Regulations

Rules on content and setting standards

- That some standards need to be set is **not** being questioned
- But **unduly high** standards on content and minimum quality could clash with consumer preferences which tend to be diverse.
- Regulations that force the quality to **unduly high** levels may disadvantage consumers – for example, lower income consumers – who may prefer a lower price and lower quality outcome.
- Housing and construction codes are necessary and designed for safety, but setting **unduly high** standards would lead to considerably higher housing prices that may result in many lower-income individuals being foreclosed from the market

Rules and Regulations

Exempting activities from national competition laws

- The motivations are diverse and include exemptions for:
 - Promoting exports
 - Regulated companies
 - Agricultural cooperatives
 - Organizations for small and medium businesses

- Downside?
 - May eliminate or reduce competition
 - The actions of businesses protected under these arrangements have often cast a long shadow.

Strategic Issues

- Lobbying. Capture.
 - Local merchants, professionals, etc, may have significant interest in placing restrictions on flow from outside.
 - Grandfathering clauses – where existing firms and facilities are given breaks from meeting new standards
 - significant incentive to lobby and affect outcomes
 - Obtain exemptions from national competition laws
 - Allowing self-regulation
 - Many benefits
 - Downside?
 - ✓ Creates conditions that facilitate collusion

Competition Checklist Questions

Initial Review: Item 1

- Limits the number or range of suppliers. This is likely to be the case if the proposal
 - Grants exclusive rights for a company to supply goods or services
 - Establishes a license, permit or authorization process as a requirement of operation
 - Limits the ability of some types of suppliers to provide a good or service
 - Significantly raises cost of entry or exit by a supplier
 - Creates a geographical barrier to the ability of companies to supply goods or services, invest capital or supply labor

Competition Checklist Questions

Initial Review: Item 2

- Limits the ability of suppliers to compete. This is likely to be the case if the proposal:
 - Controls or substantially influences the prices for goods or services
 - Limits freedom of suppliers to advertise or market their goods or services
 - Sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that many well-informed customers would choose
 - Significantly raises costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants)

Competition Checklist Questions

Initial Review: Item 3

- Reduces the incentive of suppliers to compete vigorously. This may be the case if the proposal:
 - Creates a self-regulatory or co-regulatory regime
 - Requires or encourages information on supplier outputs, prices, sales or costs to be published
 - Exempts the activity of a particular industry or group of suppliers from the operation of general competition law
 - Reduces mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers

Competition Checklist Questions

Initial Review

- A **YES** answer to **any** of the items noted in the Competition Checklist will warrant a more thorough review of the rule or regulation under consideration as it potentially signals a significant competition concern.

Competition Assessment

Full Review

- This detailed evaluation would examine all the issues related to whether the rule or regulation might
 - Impose barriers to entry of new businesses
 - Force certain types of incumbent businesses (e.g., smaller firms) to exit the market
 - Increase the prices of goods and services
 - Reduce product variety
 - Significantly increase concentration in the relevant market
 - Reduce innovation
 - Affect **upstream** and **downstream** markets
 - If yes
 - ✓ Evaluate effects on all related markets
 - Initial review
 - Full review